

Ethics Briefing

1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

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And you can visit the OGC ethics website at <http://intranet.epa.gov/ogc/ethics.htm>

2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public good. There are 14 principles that form your basic obligation of public service. We'll cover them in this briefing.

3. The President's Executive Order (for political appointees only)

On 1/28/17, President Donald J. Trump issued an Executive Order on Ethics Commitments for all political appointees in his administration that contains additional restrictions during and after your federal service. See [Exec. Order 13,770](#). You are required to sign this pledge.

The significant points of the Executive Order are as follows:

If you were a federally registered lobbyist in the previous 2 years --

- For the next 2 years, you will not participate in any particular matter on which you lobbied within the previous 2 years and you will not participate in the specific issue area in which that particular matter falls.

While you are a federal employee --

- You will not accept any gifts from a registered lobbyist, including attendance at a widely attended

gathering. There are a few exceptions, so ask an ethics official for guidance.

- For 2 years from the date of your appointment, you will not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former client(s), including regulations and contracts; and
- Any hiring or other employment decisions you make will be based on the candidate's qualifications, competence and experience.

After you leave federal service –

- For 5 years, you will not engage in any lobbying activities with respect to the agency in which you were appointed to serve;
- For the remainder of the Administration, you will not engage in lobbying activities with respect to any covered executive branch official or non-career SES employee; and
- For the rest of your life, you will not engage in any activity on behalf of a foreign government or foreign political party as their "agent" requiring registration under the Foreign Agents Registration Act of 1938 and defined at 22 U.S.C. § 611(c) (as those terms were defined as of 1/20/17).

Finally, you agree that the terms of the ethics pledge are binding upon you.

4. Important ethics housekeeping requirements

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (the Administrator has an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Office of General Counsel provides the training in-person or on-line.

You are also now subject to the STOCK Act, which means that you must report certain periodic transactions, and you have to notify OGC/Ethics within three days when you begin negotiating for future employment. We'll give you a handy chart about periodic transactions.

5. Conflicts of Interest

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially in any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So you can't participate in any particular matter

that may have a financial impact on the interests that are imputed to you.

6. Appearance of a Loss of Impartiality

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties. When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of “imputed interests.” We consider all of your “covered relationships,” which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an “appearance problem” by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

7. No representation back to the federal government

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statutes, 18 USC §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

8. Acceptance of Gifts

Be careful of any gift from people outside the Agency, particularly those that are worth more than \$20. Gifts are anything of value, and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can’t take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding \$10 from EPA employees, nor give gifts exceeding \$10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you.

9. Attendance at Widely-Attended Gatherings (ethics check required)

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a “widely attended gathering” exception of the gift rule. You can’t make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift

on your financial disclosure report if it exceeds the reporting threshold.

10. Travel Issues

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from an ethics official prior to the event. OGC/Ethics has an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See <http://intranet.epa.gov/ogc/ethics/travel.htm> . Generally, EPA accepts over \$1 million each year in travel paid by non-federal sources.

11. Preferential Treatment of Non-Federal Entities (Endorsement)

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of the regulated community or a particular contractor, etc.

12. Political Activities

Federal employees are bound by the Hatch Act, which governs political activity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; it's best to find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. Briefly, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please consult your ethics officials or see the attached chart.

13. Lobbying Issues

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is considered "indirect lobbying" and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

14. Use of Government Personnel and Resources

EPA policy permits employees to “limited use” of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a “good cause”). They also cannot use the internet connection for gambling or to access pornography. See EPA’s policy at <http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2101-0.pdf>.

Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

15. Outside Activities

Once you become an EPA employee, we consider any other employment or activity to be “outside activity” for which you may need to seek approval in order to proceed. You cannot receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you’ve been assigned in the previous year, or to any ongoing Agency program, policy or operation. Further, you should not use EPA time or resources, including email, to further your outside activity. While there is a *de minimis* use of government equipment, that does not apply to your compensated outside activity.

16. Seeking Employment

It’s always odd to talk about seeking employment when we are greeting you to the Agency, but there are some restrictions that apply that are not always evident. You should not participate in a matter involving a party with which you are seeking employment, which starts as soon as you directly or indirectly contact a prospective employer, or even as soon as you get a response expressing interest in you. The appropriate course of action from an impartiality standpoint is to disqualify yourself from matters that may affect the specific prospective employers.

17. Negotiating for Employment

When your pursuit of future employment advances to “negotiating” for employment with a particular entity, then you have additional ethical restraints. The financial interests of any person or entity with whom you are “negotiating” for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 USC § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply generally to that industry or class.

Filers of the public financial disclosure report are further subject to the STOCK Act, which requires you to notify OGC/Ethics within three days of beginning negotiations for future employment.

18. Post-Government Employment - Representational Restrictions

Keep in mind that, once you leave federal service, you become a member of our alumni association. Here are the highlights of the restrictions (though there are others and some exceptions/waivers). Your ethics officials are still here to provide you with post-employment advice, so keep our numbers handy!

Lifetime bar - on particular matters that you worked on

You will be prohibited by criminal statute from representing back to the federal government on any particular

matter involving specific parties in which you participated personally and substantially while in federal service. “Representation back” means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

2-year bar - on EPA matters pending during your last year in federal service

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn’t work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

Senior Employee “cooling off restriction” – on any matter

Depending on your rate of pay, you may be considered a “senior official” and will be restricted for one year from making any contact with EPA following your departure. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 2017, the defining rate of pay for “senior officials” is \$161,755 per year (excluding locality pay). If you are make more than that (before locality pay), then you are a “senior employee” and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a “senior employee” and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!

Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

Political activity means an activity “directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.”

Type of Activity	PAS*	Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other	Career SES, ALJs
Personal (off premises and off duty)			
Express support for or opposition to a political candidate when off duty	Yes	Yes	Yes
Run as a partisan candidate for nomination or office in a partisan election	No	No	No
Solicit and accept contributions for your campaign in a non-partisan election	Yes	Yes	Yes
Solicit a contribution from a member of your union	N/A	Yes	N/A
Work a phone bank asking individuals to volunteer	Yes	Yes	No
Campaign on behalf of a candidate in a partisan election	Yes	Yes	No
Be active on behalf of a candidate at political rallies or meetings	Yes	Yes	No
Attend political rallies and meetings	Yes	Yes	Yes
Contribute money to political organizations	Yes	Yes	Yes
Work in non-partisan voter registration drives	Yes	Yes	Yes
Work in partisan voter registration drives	Yes	Yes	No
Register and vote	Yes	Yes	Yes
Sign a nominating petition	Yes	Yes	Yes
Distribute campaign material in a partisan election	Yes	Yes	No
Work as an election judge, poll watcher, clerical worker on election day	Yes	Yes	Yes
Drive people to polling station on behalf of a campaign	Yes	Yes	No
Affecting Official Resources			
Use office time for political activity	Yes; IG-No	No	No
Use official space for political activity in general	Yes; IG-No	No	No
Fundraising			
Attend a political fundraiser	Yes	Yes	Yes
Solicit, accept or receive political contributions in general	No	No	No
Solicit or receive a political contribution on government premises	No	No	No
Plan or organize a political fundraiser when off duty	Yes	Yes	No
Sponsor, host, or allow your name as sponsor/host for a political fundraiser	No	No	No
Serve drinks or check coats at a political fundraiser	Yes	Yes	No
Speak at a partisan fundraiser without appealing for money	Yes	Yes	No
Allow only your name to be listed as speaker on fundraising invitation	Yes	Yes	No

* PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service

